

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**

SONY MUSIC ENTERTAINMENT, *et al.*,

Plaintiffs,

v.

COX COMMUNICATIONS, INC., *et al.*,

Defendants.

Case No. 1:18-cv-00950-LO-JFA

[PROPOSED] ORDER

Having considered Plaintiffs’ Motion to Strike Portions of the Declaration of Thomas Kearney (the “Motion”), it is hereby ORDERED that the Motion is GRANTED. Accordingly, the following portions of the Declaration of Thomas Kearney in Support of Defendants’ Motion for Summary Judgment (“Kearney Declaration” or “Kearney Decl.”), ECF No. 329-1, are stricken from the summary judgment record and will be given no consideration in deciding the parties’ summary judgment motions:

- The spreadsheet produced by Audible Magic with the Bates No. AUDIBLE-MAGIC-0007657 that is sometimes referred to as “REV00003444” or the “Audible Magic Spreadsheet” (Kearney Decl. Ex. 40), and any testimony based on it (Kearney Decl. ¶ 48);
- Exhibits attached to and included in the Kearney Declaration purporting to summarize and analyze other documents (Kearney Decl. Exs. 27, 28, 33, 33A, 34 and ¶ 44);

- All testimony in the Kearney Declaration about, and based on, the summary exhibits referenced in the preceding paragraph (Kearney Decl. ¶¶ 29, 35, 37, 40, 44);
- All testimony in the Kearney Declaration based on “information and belief” (Kearney Decl. ¶¶ 23, 33, 39, 51, 52); and
- All testimony in the Kearney declaration based on Mr. Kearney’s review of documents about which he has no personal knowledge (Kearney Decl. ¶¶ 28, 29, 31, 32, 33, 34, 36, 38, 39, 40, 41, 44, 46, 47, 48, 53).

It is so ORDERED this ____ day of _____, _____.

Judge for the Eastern District of Virginia